ODell Net Neutrality Comments 2017-05-19

re FCC NPRM 17-108 "Restoring Internet Freedom"

Mark O'Dell
119 Grove Ln
Sierra Madre, CA  91024
N2DRK
626-319-9502
emark@alumni.caltech.edu

1980(s) @ Bell Labs, Murray Hill, NJ
1990(s) @ Caltech, Pasadena, CA
2000(s) @ JPL, Pasadena, CA
2010(s) @ IPAC (NASA, Caltech, JPL)

currently Principal Software Engineer

with a lifetime in Computing, Science, and Technology Development

Do not forget the needs-for and costs-of breaking up the Bell system and
bringing utility regulation to our last wave of communications technology evolution.

That was caused by terrible rules like this.

Do not let fairness and ethics be overridden by a few to make money
at the expense of all in a society trying to be democratic.

> https://www.fcc.gov/ecfs/filings
> https://www.fcc.gov/document/restoring-internet-freedom
> https://www.fcc.gov/ecfs/search/filings?q=restoring%20internet%20freedom&sort=date_disseminated,DESC

* comments follow *

I write in opposition to FCC NPRM 17-108.

Its offensive name "Restoring Internet Freedom" is very much the opposite of its true objective.

Clearly the document author knows this, and that this entire process is a farce pushed through by political power, not reasoning or equity.

FCC should not just mean "Favors for Communications Companies" and "F**** Citizen Communications", the slang I keep hearing; the Federal Communications Commission was once an honorable agency which had my respect, not least from many well-reasoned rules I learned, and affirmed understanding through many licensing exams.

Please find some rational way to prevent an affluent few from exploiting everyone else, just because they can.

Utility style regulation is entirely appropriate to the internet.

As critical communications infrastructure, used and needed by all, failure to manage as a utility would invite monopoly and exploitation of the many for the benefit of a few, which runs profoundly counter to basic tenets of democracy, and seems to be the direct objective of 17-108.

Government's role should be to establish and protect equitable rules that enable people, not enrich companies.

Keep the Bright-Line rules of Title II.

NPRM 17-108 has enormous asymmetry even introducing its arguments.

In simplest terms, points 1 & 2, speaking of history, have references to concrete data; points 3 & 4, interpreting recent events and projecting into the future, as seen by the author, do not include any references and must be considered purely opinion.

Subjective characterization of the past and colorized imagining of the future should have no place in reasoned rulemaking.

I directly dispute the assertion of introductory point 4, that "Internet service providers have pulled back on plans to deploy new and upgraded infrastructure", which is contradicted by all studies, market data, and corporate publications, that I am aware of.

Where is there any neutral documentation of these assertions ?!

There is none, because it is the faux background painted by the author fighting straw men while letting real exploiters run amok.

Reasoned argument here would be clearly wasted as this NPRM plays word games and hallucinates its own reality, e.g. "mobile broadband Internet access service is not a commercial mobile service".

I have extensive reasoning, documented facts, and countless friends and colleagues opposing this legislation, but the very tone of the document suggests it would all be wasted on administration which already has a conclusion in mind and is just working out how to warp reality to reach that goal.

Everyone I know professionally and socially is opposed to this policy change and may be universally considered Pro- Net Neutrality.

17-108 is profoundly Anti- Net Neutrality.

For every comment you receive AGAINST this policy, tens of thousands of silent others agree but do not have time or technical confidence to argue here; there are rational, logical, psychological, social, ethical, political, and many other kinds of arguments against this NPRM, coming from all sides by the very individuals the FCC is tasked with protecting.

Statements FOR this policy only come from a very few, all with business interests, putting political leverage ahead of reasoned rulemaking.

Corporations are not persons; they are often the very cause of need for FCC protection of countless individuals.

Sadly even this is probably wasted effort, but I deeply oppose and object to FCC NPRM 17-108, and respectfully request that the FCC do its job, not favors for rich friends, and protect the rights of our citizenry.

I am asking you (FCC) to Protect Me (and everyone else) from the few that would exploit us, unless blocked by the only agency that can -- FCC.

With All Due Respect,

Mark O'Dell

Included fragments from FCC NPRM 17-108

- Propose to reinstate the information service classification of broadband Internet access service and return to the light-touch regulatory framework first established on a bipartisan basis during the Clinton Administration.

- Propose to reinstate the determination that mobile broadband Internet access service is not a commercial mobile service and in conjunction revisit the elements of the *Title II Order* that modified or reinterpreted key terms in section 332 of the Communications Act and our implementing rules.

- Propose to return authority to the Federal Trade Commission to police the privacy practices of Internet service providers.

- Propose to eliminate the vague Internet conduct standard.

- Seek comment on whether to keep, modify, or eliminate the bright-line rules set forth in the *Title II Order*.

- Propose to re-evaluate the Commission's enforcement regime to analyze whether *ex ante* regulatory intervention in the market is necessary.

- Propose to conduct a cost-benefit analysis as part of this proceeding.

1. Americans cherish a free and open Internet. And for almost twenty years, the Internet flourished under a light touch regulatory approach. It was a framework that our nation's elected leaders put in place on a bipartisan basis. President Clinton and a Republican Congress passed the Telecommunications Act of 1996, which established the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation."1

2. During this time, the Internet underwent rapid, and unprecedented, growth.2 Internet service providers (ISPs) invested over $1.5 trillion in the Internet ecosystem3 and American consumers enthusiastically responded. Businesses developed in ways that the policy makers could not have fathomed even a decade ago. Google, Facebook, Netflix, and countless other online businesses launched in this country and became worldwide success stories. The Internet became an ever-increasing part of the American economy, offering new and innovative changes in how we work, learn, receive medical care, and entertain ourselves.4

3. But two years ago, the FCC changed course. It decided to apply utility-style regulation to the Internet. This decision represented a massive and unprecedented shift in favor of government control of the Internet.

4. The Commission's *Title II Order* has put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Investment in broadband networks declined. Internet service providers have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest Internet service providers that serve consumers in rural, low-income, and other underserved communities. Many good-paying jobs were lost as the result of these pull backs. And the order has weakened Americans' online privacy by stripping the Federal Trade Commission—the nation's premier consumer protection agency—of its jurisdiction over ISPs' privacy and data security practices.

1 47 U.S.C. § 230(b)(2).

2 *See, e.g.*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in A Reasonable & Timely Fashion, & Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, As Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1383, para. 15 (2015) (*2015 Broadband Progress Report*) (noting that broadband providers recognized "both the value of and the need for continued investment to develop a robust broadband network that will meet consumers' demands," and that between 2012 and 2013, broadband providers had increased their investments by approximately 10 percent, to $75 billion).

3 USTelecom, Broadband Investment, Historical Broadband Provider Capex (2017) (data through 2015), https://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment.

4 *See, e.g.*, Aaron Smith, Pew Research Center, Searching for Work in the Digital Era at 2 (2015), http://www.pewinternet.org/files/2015/11/PI_2015-11-19-Internet-and-Job-Seeking_FINAL.pdf (detailing the importance of the Internet for job seekers); *Lifeline & Link Up Reform & Modernization*, Order on Reconsideration, 31 FCC Rcd 3962, 3967, para. 16 (2016) (discussing the benefits of telemedicine).

## A. Strong Rules That Protect Consumers from Past and Future Tactics that Threaten the Open Internet

### 1. Clear, Bright-Line Rules

14. Because the record overwhelmingly supports adopting rules and demonstrates that three specific practices invariably harm the open Internet—Blocking, Throttling, and Paid Prioritization—this Order bans each of them, applying the same rules to both fixed and mobile broadband Internet access service.

15. No Blocking. Consumers who subscribe to a retail broadband Internet access service must get what they have paid for—access to all (lawful) destinations on the Internet. This essential and well-accepted principle has long been a tenet of Commission policy, stretching back to its landmark decision in Carterfone, which protected a customer's right to connect a telephone to the monopoly telephone network. 16 Thus, this Order adopts a straightforward ban:

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non- harmful devices, subject to reasonable network management.

16. No Throttling. The 2010 open Internet rule against blocking contained an ancillary prohibition against the degradation of lawful content, applications, services, and devices, on the ground that such degradation would be tantamount to blocking. This

Order creates a separate rule to guard against degradation targeted at specific uses of a customer's broadband connection:

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management.

17. The ban on throttling is necessary both to fulfill the reasonable expectations of a customer who signs up for a broadband service that promises access to all of the lawful Internet, and to avoid gamesmanship designed to avoid the no-blocking rule by, for example, rendering an application effectively, but not technically, unusable. It prohibits the degrading of Internet traffic based on source, destination, or content.17 It also specifically prohibits conduct that singles out content competing with a broadband provider's business model.

18. No Paid Prioritization. Paid prioritization occurs when a broadband provider accepts payment (monetary or otherwise) to manage its network in a way that benefits particular content, applications, services, or devices. To protect against "fast lanes," this Order adopts a rule that establishes that:

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization.

"Paid prioritization" refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.18

19. The record demonstrates the need for strong action. The Verizon court itself noted that broadband networks have "powerful incentives to accept fees from edge providers, either in return for excluding their competitors or for granting them prioritized access to end users."19 Mozilla, among many such commenters, explained that "[p]rioritization . . . inherently creates fast and slow lanes."20 Although there are arguments that some forms of paid prioritization could be beneficial, the practical difficulty is this: the threat of harm is overwhelming,21 case-by-case enforcement can be cumbersome for individual consumers or edge providers, and there is no practical means to measure the extent to which edge innovation and investment would be chilled. And, given the dangers, there is no room for a blanket exception for instances where consumer permission is buried in a service plan—the threats of consumer deception and confusion are simply too great. 22

.

.

.

16 Use of the Carterfone Device in Message Toll Telephone Service; Thomas F. Carter and Carter Electronics Corp., Dallas, Tex. (Complainants), v. American Telephone and Telegraph Co., Associated Bell System Companies, Southwestern Bell Telephone Co.,

and General Telephone Co. of the Southwest (Defendants), Docket Nos. 16942, 17073, Decision, 13 FCC 2d 420 (1968) (Carterfone), recon. denied, 14 FCC 2d 571 (1968).
17 To be clear, the protections of the no-blocking and no-throttling rules apply to particular classes of applications, content and services as well as particular applications, content, and services.